



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/042,494 | 01/09/2002 | James M. Mcardle | AUS920010927US1 | 6745 |

7590

03/01/2005

Frank C. Nicholas
CARDINAL LAW GROUP
Suite 2000
1603 Orrington Avenue
Evanston, IL 60201

EXAMINER

BULLOCK JR, LEWIS ALEXANDER

ART UNIT

PAPER NUMBER

2127

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/042,494

Applicant(s)

MCARDLE, JAMES M.

Examiner

Lewis A. Bullock, Jr.

Art Unit

2127

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-12 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Jordan (U.S. Patent 4,868,785).

As to claim 1, JORDAN teaches a method of passing parameters within a customized command environment (via a macro editor / function editor) (col. 3, line 17 – col. 5, line 20) comprising: storing the command environment (macro / block instructions) as an array of strings (array of strings) (via parameters stored as an array of strings) (col. 22, lines 26-43); adding at least one parameter as a string variable to the array (fill in parameters in parameter block via the editor software under the block editor) (col. 9, lines 50 – col. 10, line 29; col. 15, lines 40 – col. 16, line 18; col. 13, line 49 - col. 14, line 34; col. 17, line 31 – col. 18, line 22; col. 30, lines 37-65; and invoking the customized command environment with the added parameters (via execute the macro / block) blocks (via the execution software under the block editor) (col. 10, lines 30-68; col. 16, line 45 – col. 17, line 28; col. 18, lines 24-53).

As to claim 2, JORDAN teaches creating the customized command from within a programming application (fill in parameters in parameter block via the editor software

under the block editor) (col. 9, lines 50 – col. 10, line 29; col. 15, lines 40 – col. 16, line 18; col. 13, line 49 - col. 14, line 34; col. 17, line 31 – col. 18, line 22; col. 30, lines 37-65).

As to claim 3, JORDAN teaches creating the parameter within the programming application (fill in parameters in parameter block via the editor software under the block editor) (col. 9, lines 50 – col. 10, line 29; col. 15, lines 40 – col. 16, line 18; col. 13, line 49 - col. 14, line 34; col. 17, line 31 – col. 18, line 22; col. 30, lines 37-65).

As to claim 4, JORDAN teaches the parameter is selected from a group consisting of standard characters (user fills in parameters via a standard input device, i.e. keyboard) or special characters (mouse events) (col. 15, line 40 – col. 16, line 18; col. 20, lines 19-53; col. 37, lines 17-31; fig. 5; col. 8, lines 35-51).

As to claims 5-8, reference is made to a computer usable medium that corresponds to the method of claims 1-4 and is therefore met by the rejection of claims 1-4 above.

As to claims 9-12, reference is made to a system that corresponds to the method of claims 1-4 and is therefore met by the rejection of claims 1-4 above.

Response to Arguments

Applicant's arguments filed 10/28/04 have been fully considered but they are not persuasive. Applicants arguments center upon the limitation of a command environment as disclosed in the claims. Applicant state that a command environment is defined by a command language, with its underlying data and supports a number of commands which, once issued, perform non-interactively, and which, when finished, leave the old command environment in control. The examiner disagrees with this definition for the following reasons: In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the environment is defined by a command language, with its underlying data and supports a number of commands which, once issued, perform non-interactively and which, when finished leave the old command environment in control) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Secondly, the cited definition that Applicant is reading from is from a co-pending application. Cited text from the M.P.E.P. state:

Art Unit: 2127

**>Claim terms are presumed to have the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Sunrace Roots Enter. Co. v. SRAM Corp.*,

336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); *Brookhill-Wilk I, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298, 67 USPQ2d 1132, 1136 (Fed. Cir. 2003)("In the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art.") However, an applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning. *See In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).< Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings."). ** Any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). **>See also MPEP § 2111.01.<

III. < APPLICANT MAY BE OWN LEXICOGRAPHER

****>** An applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) (inventor may define specific terms used to describe invention, but must do so "with reasonable clarity, deliberateness, and precision" and, if done, must "set out his uncommon definition in some manner within the patent disclosure" so as to give one of ordinary skill in the art notice of the change" in meaning) (quoting *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88, 21 USPQ2d 1383, 1386 (Fed. Cir. 1992)). Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings"). Any< special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999) and MPEP § 2173.05(a).

The cited text above states that the definition of terms will have the ordinary and customary meaning attributed to those skilled in the art. In the cases where Applicant changes those customary meaning, the specification must be set out with clarity, deliberateness and precision the uncommon definition in some manner within the patent disclosure. In Applicant's response, it is stated that a command environment is defined by a command language with its underlying data in U.S. Patent Publication 2003/0131340. The cited argument is unpersuasive since (1) the alleged definition is within another patent disclosure, and (2) the cited disclosure does not state that the

command environment is defined by a command language or that the commands that once issued, perform non-interactively, and which when finish, leave the old command environment in control. The cited disclosure at best teaches that most languages provide an API to launch an external command and that a user may choose to either use the existing command environment or create a new restricted environment for the external command. The cited disclosure makes no mention of the alleged definition that Applicant is making. In addition, even if a definition of such was in the disclosure, the examiner is not bound to such a definition for the following reasons (1) since the scope of the invention is based on the appended claims and all changes that come within the meaning and range of equivalents are intended to be embraced therein (last paragraph), the terms can have their common meaning as disclosed by the examiner in the rejection, and (2) the alleged defined limitations are not disclosed in the claim language and therefore are not considered as part of a command environment. See M.P.E.P. 2111, regarding reading in limitations in the specification into the claim language.

Therefore, a command environment as disclosed in the claims is an array of strings. Applicant argues that Jordan does not teach storing a command environment as an array of strings and invoking the command environment with the added parameters. The examiner disagrees. Jordan teaches a macro/block editor that generates, edits (via the editor software under the block editor) (col. 9, lines 50 – col. 10, line 29), and executes macros/blocks (via the execution software under the block editor) (col. 10, lines 30-68). Jordan teaches that a block has its parameters stored as

an array of strings (col. 22, lines 26-43). Jordan also teaches that the block's parameters can be edited, and executed based on its parameters (col. 16, line 45 – col. 17, line 28; col. 18, lines 24-53). Jordan also teaches that macros are an executable combination of blocks. Therefore, a macro is a block, except with more functionality. Therefore, based on claim as disclosed, Jordan teaches storing a command environment as an array of strings since the block/macro parameters are stored as an array of strings and invoking the command environment with an added parameter since the blocks / macros are executed and can have their parameters customized and re-executed. Thus the Jordan meets the claim limitations as disclosed.

Applicant argues that a customized command environment receives parameters passed from an application. In response, the examiner would like to point out that Jordan teaches that the user through the Block editor passes the parameters to the block, i.e. the command environment (col. 9, lines 25-47; col. 9, lines 50 – col. 10, line 29). Therefore, the block does receive parameters pass from an application.

Applicant argues that parameters be selected from a group consisting of standard characters, special characters, and embedded spaces and that “standard characters”, “special characters” and “embedded characters” do not appear in Jordan. The examiner disagrees. Jordan teaches that a user can type in a number to specify the requested parameter for the block (col. 15, lines 40 – col. 16, line 18). A number is a standard character that can only be inputted by a user through an input device. At col. 20, lines 19-53, the user defines parameters for the block by editing a line and replacing the names of parameters. All of the names contain standard characters, i.e.

letters. The claim, as disclosed states the parameter is selected from a group consisting of standard character, special character, and embedded space. Therefore, the parameter is one of the three. Since the array of parameters is a character array that must not contain white spaces (col. 37, lines 17-31). The parameter is a standard character and thus meets the claim limitations.

Therefore, the rejections are maintained as disclosed above.

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lewis A. Bullock, Jr. whose telephone number is (571) 272-3759. The examiner can normally be reached on Monday-Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



LEWIS A. BULLOCK, JR.
PRIMARY EXAMINER

February 19, 2005